

H.R. 5746

Mr. KAINE. Madam President, one of the things that I sometimes regret about this body—and especially after hearing such an eloquent presentation from my colleague from California—is that we don't do enough dialogue here; it is a lot of monologues. Often, some of the best speeches that I have heard in this Chamber have been delivered to nearly empty Chambers because we don't sit and listen to one another, answer questions, engage, find the greater wisdom.

I am excited that tomorrow will give us an opportunity to do that. I expect 50—hopefully, 60, 70, 80, 90, 100—Senators on the floor for a discussion about voting rights, which we have not been able to have since I joined the Senate in January of 2013. This is an enormously important topic. We have not had a floor debate on any voting rights bill since I came to the Senate in 2013.

In this spirit of dialogue, I wanted to basically come and talk about Senate rules to respond to a question or a challenge that Republicans were making on the floor last week. They pointed out that I, along with a number of Democrats, had signed a letter in 2017, arguing, in their view, that we should not change the filibuster on legislation. They cited that, and they said: How can you stand on the floor now and contemplate changes to the filibuster rule?

So what I wanted to do tonight is come to the floor and talk about 2017, talk about things that have happened since 2017, and, frankly, explain why I haven't really changed the position that I articulated in the letter, but I have changed my views about whether the filibuster accomplishes the objective or cuts against it.

Finally, what I want to do at the end of that, of answering their question about that letter, is to reassure them—to reassure them that what we will reach for tomorrow is not a blowing up of the filibuster.

I heard my colleague from Alaska today say we wanted to blow up the filibuster. No. Let me reassure all Republicans that that is not what they are going to be asked to vote on tomorrow. They are going to be asked to restore the filibuster to what it was during the vast majority of the history of this body.

Here is the operant quote from the letter of 2017 that I signed. It was in April of 2017, shortly after the Republicans had changed the Senate rules to ram through Neil Gorsuch after they had refused to even entertain the nomination of Merrick Garland to the Supreme Court. It was a bipartisan letter. “We are united in our determination to preserve the ability of Members to engage in extended debate when bills are on the Senate floor”—“extended debate when bills are on the Senate floor.”

Well, what has happened since that letter was written in April of 2017?

First, those of us in the room know, as for extended debate on the Senate

floor, are you kidding? It almost never happens. The filibuster rule that some of us hoped might facilitate that has become an obstacle to it. In fact, you can't even get a bill on the Senate floor because the filibuster requirement, which was initially something about final passage, has been now imported even into proceeding to legislation. So when a majority of Members of the greatest deliberative body in the world decide they want to talk about a topic, they can't. It is like the 21st century's version of the gag rule, which prohibited discussions in Congress on items related to slavery during the 1830s and 1840s. There has been a gag rule prohibiting discussions of the voting rights bill and other civil rights legislation and other important priorities because you can't even get on the bill, much less have extended debate about it.

When you do get on the bill, how many bills around here do we have extended debate on? Mostly, we are in a Chamber like this, with three people, and there is no real debate that is going on because the abuse of the filibuster leads a party to say: Well, gosh, if they can't get 60 votes for something, we don't even have to show up. The old public filibuster of “Mr. Smith Goes to Washington” days has now turned to a secret, private filibuster where people can stay in their offices and never show their faces on the floor.

So that notion of naive Senators like me in 2017, wherein we are determined to preserve the ability of Members to engage in extended debate when bills are on the Senate floor, has been undermined by the filibuster by making it hard to get bills on the floor and then guaranteeing, when they are on the floor, that nobody needs to show up.

Other things have happened since 2017. I needn't go over them at length, but I will go over them.

I didn't imagine that we would have a President who would lead an assault on American democracy, who would lie and claim he won the popular vote in 2016 when he didn't, who would claim there was massive fraud in the Virginia election in 2016 when there wasn't, and who would go to a foreign country and try to dig up dirt on a political opponent he feared in 2020. I didn't imagine that those things would happen.

I didn't imagine that the President, having lost an election in November 2020, would encourage his followers to gather in DC to be wild. I didn't imagine that he would call the head of the Georgia elections and say: You have to find me thousands of votes so I can win. I didn't imagine those things.

I didn't imagine that there would be a violent attack here that would injure 150 police officers, that there would be an effort to disenfranchise 80 million Americans and disrupt the peaceful transfer of power. I didn't imagine those things.

I didn't imagine that States would do what my colleague from California has suggested: Look at what happened in

2020, embrace the Trump Big Lie, and decide then, boy, we have really got to carve this back. We have got to carve this back dramatically and make it harder for particular groups of people who live in particular cities or counties, based on whom they vote for, to vote. I didn't imagine those things.

I will tell you something else I didn't imagine. I didn't imagine that we wouldn't get any help from the Republican Party in addressing these problems. The Republican Party throughout most of its history has been a great voting rights party. The 14th Amendment and the 15th Amendment only passed with Republican votes to guarantee people equal access to the ballot. When the 19th Amendment was passed, guaranteeing women the right to vote, it was in a Democratic administration, the Wilson administration, but Republicans were solidly on board. When the 26th Amendment passed to give the franchise to 18-year-olds, it was in the Nixon administration, and Democrats and Republicans were on board.

The Republican Party, from its origins, right before Lincoln was President, was always on the march and, frankly, usually leading the march to expand people's ability to participate in voting. There is no example that is more dramatic than the passage of the 1965 Voting Rights Act.

There was a 60-day filibuster here on the Senate floor. At the end, it was broken. Republicans voted for the Voting Rights Act near unanimously. Democrats were strong but not as solid as the Republicans were. Then, over and over again in the years between 1965 and up through 2006, Republicans would vote unanimously or near unanimously to reauthorize the Voting Rights Act. But something changed between 2006 and 2013. Something changed at about the time that Barack Obama was elected President of the United States.

When the Supreme Court of the United States, in the Shelby case, gutted the preclearance provisions of the Voting Rights Act but told Congress “You can fix it” and we went back to all of the Republicans who had supported the Voting Rights Act from 1965 to 2006 and said “OK. The Supreme Court says here is what is wrong, and we can fix it,” we have not been able to find any—any—Republican support save LISA MURKOWSKI of this Chamber, who is a cosponsor of the John Lewis Voting Rights Act, the restoration of preclearance.

When I signed the letter in 2017, I could not have imagined that we could not have found any Republican support on any voting rights issue.

I heard my colleague from Utah, Senator ROMNEY, talk a second ago, and he said: Well, how come Democrats didn't do it? I started working with Republicans in July—months before we filed the Freedom to Vote Act. Could you do it this way? Could you do it that way? What about if we completely gave up the idea of any rule or filibuster reform. Would you then engage with us?

How about unlimited amendments? How about give us a counterproposal?

I have been in these discussions with Republican colleagues for months. Again, save Senator MURKOWSKI on the John Lewis bill, there has been no help forthcoming to save our democracy, to save voting.

So, when colleagues ask, “Well, you signed a letter in 2017, and that letter said that we should preserve the ability of Members to engage in extended debate when bills are on the Senate floor. So why are you now contemplating rules changes?” my answer to them is that I am contemplating rules changes to do exactly that. We don’t have extended debate on the Senate floor. You can’t get bills on the Senate floor. Our democracy is under attack, and voting is under attack. Contrary to the previous 150-year history of your party, you won’t lift a finger to protect voting rights or protect the integrity of our elections, but because you won’t doesn’t mean we should not. In fact, if you won’t, the burden is on our shoulders even more.

Here is something else, I will be honest, that I have come to understand more about the filibuster since 2017. Then I want to conclude by offering some words of reassurance to my Republican colleagues.

The fact that the filibuster is now used indiscriminately against everything does not cleanse it of the stench of its predominant use in our history to block civil rights legislation. I mean, now we use the filibuster to block what might be a nonconsequential appointment. We use it for everything. However, when the history of the filibuster is written in this Chamber, the pivotal, epic moments that will get remembered are Robert Byrd’s 14-hour-and-13-minute speech to try to filibuster against the Civil Rights Act of 1964, Strom Thurmond’s massive filibuster against civil rights laws, and Senators from Virginia—Senators who held the seat that I now occupy—filibustering against civil rights laws.

You don’t cleanse the stench from the filibuster by just suddenly using it for everything. You still have to acknowledge it has played a particular role in the Senate. Sadly, that role has usually been to the detriment of the kinds of people who couldn’t see anybody who looked like them in the Senate.

I occupy a seat that was occupied for 50 years by Harry Byrd, Sr., and Harry Byrd, Jr. It is called the Byrd seat in the Senate because the Byrd machine ran Virginia politics, and they kind of owned it. Harry Byrd, Sr., was Governor in the 1920s and came to the Senate when Carter Glass died in 1933 and stayed until he died in 1966. His son, Harry Byrd, Jr., was then appointed to the Senate until 1983. For 50 years, the Byrds held the seat I now occupy.

I was at the inauguration of our new Governor in Richmond on Saturday, and I walked by an empty place on the Capitol Square where, just 6 months

ago, there was a statue of Harry Byrd, Sr.—the Governor who was a great highway builder and infrastructure guy; the Governor who came up with the idea and worked with President Roosevelt to build the Shenandoah National Park; the Governor who then, as Senator, led this Byrd machine and was viewed as the dominant figure in Virginia political life during the 20th century, together with his son, Harry Byrd, Jr.—but the statue was taken down. The statue was taken down 7 months ago.

The middle school that was named for Harry Byrd, Sr., in Henrico County was renamed 5 years ago to Quiccasin Middle School. Why was that? Highway builder, park developer, dominant political figure, his statue was taken down because of what he did in the U.S. Senate; that he would write the southern manifesto to rally Senators against *Brown v. Board*; that he would encourage Virginia public school systems—again, this is as a Senator, not as a Governor; he encouraged Virginia public school systems—to shut down rather than integrate; that he would engage in one filibuster after the next against civil rights legislation, including the Voting Rights Acts, and never apologized, never admit he was wrong, unlike Robert Byrd, who was a Klansman before he was in the U.S. Senate and who filibustered famously against civil rights legislation until he had an epiphany in 1968 when he voted for the Fair Housing Act and apologized for the rest of his life and became a civil rights champion. Harry Byrd, Sr., used the filibuster for, frankly, what it has been used for around here—to exclude people from the democracy. And the tributes to Harry Byrd and the statues and the school names are all coming down.

Even at the university in his own hometown, Shenandoah University in Winchester, which had named its business school after Harry Byrd, Jr., they wiped that name off, because the filibuster is not just like a Senate rule that can be used like anything else. It has been used for a particular purpose, and we can’t be blind to that.

But let me just say this, as I conclude. I want to offer my colleagues a reassurance—those who have asked why we are contemplating rules changes, those who signed the letter with us, because it was a bipartisan letter. It was led by Senators COONS and COLLINS, and many Republicans signed it. “We are united in our determination to preserve the ability of Members to engage in extended debate when bills are on the Senate floor.” For the first time in my Senate career, there is a voting rights bill on the Senate floor, and we will have a rules adjustment vote at the end of the day tomorrow, in all likelihood. And what will that vote be? Will the vote be to eliminate the filibuster? No. Will the vote be to abolish the filibuster? No. Will it be to weaken the filibuster? No.

Here is the vote that we will vote on tomorrow: Should we change the secret

filibuster that allows Members to just sit in their office and not take the floor and not explain their opposition to their colleagues and not have to face the American public? Should we change that secret filibuster into a public filibuster, the way it was done during the vast majority of Senate history, where Senators who went to block action by a majority should at least have to do the work, should at least have to come to the floor and explain to their colleagues and the American public why the majority should not act?

For everyone on the Republican side who signed that letter saying we should have extended debate on the Senate floor and it should not be curtailed, we are giving you a chance to do exactly what you pledged to do. For every one in our own caucus who has expressed reticence about weakening or diminishing the filibuster, we are giving you exactly the thing that you said you wanted—an opportunity to have full debate that could go on for a very long time and not be curtailed. And the only thing we will require is that that debate actually happen in the view of the American public and your colleagues, a fundamental opportunity for all of us to do the right thing by Senate rules to accomplish the right thing for our democracy. I so welcome the chance to finally have this debate on the floor of the U.S. Senate.

With that, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MERKLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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Mr. MERKLEY. Madam President, voting rights are really at the heart of our “We the People” Constitution.

I will tell you, every time I look at a printed copy of the Constitution and I see those three words in supersize font, “We the People,” I think, you know, it is a beautiful thing that our Founders, when they were writing the Constitution, reminded us of the heart of what it is all about: not power that flows down from Kings or dictators but power that flows up from the people of the United States.

And how does that power flow? It flows through elections. So if you don’t have integrity in the elections, then, you really don’t have government of, by, and for the people.

Now, over the course of our Nation, we know that we have worked to expand the vision the Nation was founded on, but it wasn’t reached in the beginning. It was often the case that only White Protestant male landowners got to vote in the beginning.

And we recognized that every person created equal needs to have an equal